

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Border International Broadcasting, Inc.) MB Docket No. 23-153
Petition for Declaratory Ruling Under Section)
310(b)(4) of the Communications Act of 1934, as)
Amended)

DECLARATORY RULING

Adopted: December 26, 2023

Released: December 26, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau (Bureau) grants a petition for a declaratory ruling (Petition) filed by 1234567 Corporation (123 Corp. or Petitioner), on behalf of Border International Broadcasting, Inc. (BIBI or Licensee).1 The Petition asks the Commission to exercise its discretion to permit foreign ownership in 123 Corp., the proposed controlling U.S. parent of Licensee, to exceed the 25% benchmarks established in section 310(b)(4) of the Communications Act of 1934, as amended (the Act),2 and sections 1.5000 et seq. of the Commission's rules.3 As discussed below, the Petition seeks authority for up to 100% aggregate foreign investment (voting and equity) in 123 Corp.,

1 Petition for Declaratory Ruling of Border International Broadcasting, Inc., Application File No. 0000206397 (filed Jan. 12, 2023) (Petition); Supplement to Petition for Declaratory Ruling, Application File No. 0000206397 (filed Apr. 20, 2023) (First Supplement); Second Supplement to Petition for Declaratory Ruling, Application File No. 0000206397 (filed Apr. 26, 2023) (Second Supplement). Contemporaneously with the filing of the Petition, BIBI filed an application seeking Commission consent to the transfer of control of WLYK(FM), Cape Vincent, New York (Facility ID No. 8567), the sole broadcast license it holds. See Application of Border International Broadcasting, Inc. for Consent to Transfer Control, Application File No. 0000206397 (filed Jan. 5, 2023). As detailed further below, 123 Corp., the proposed transferee in the transfer of control application and the proposed direct 100% interest holder of BIBI, filed the Petition on behalf of itself, the licensee BIBI, and the individuals and entities that will hold a direct or indirect interest in 123 Corp.

2 Section 310(b)(4) of the Act states:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

47 U.S.C. § 310(b)(4).

3 47 CFR §§ 1.5000 et seq. See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership Order), pet. for recon. dismissed, 32 FCC Rcd 4780 (2017).

the proposed controlling U.S. parent, and specific approval⁴ for certain foreign investors to hold more than 5% equity and/or voting interest in 123 Corp.⁵ No comments or oppositions were filed in response to the Petition.⁶ As discussed below, and consistent with the input received from the National Telecommunications and Information Administration (NTIA) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), we find that it will serve the public interest to grant the Petition, subject to the conditions specified below.⁷

II. BACKGROUND

2. *Pending Transactions.* The Commission's approval of the Petition is being sought in connection with the sale of radio station WLYK(FM), Cape Vincent, New York (Facility ID No. 8567) from three U.S. citizens to 123 Corp., an entity indirectly owned and controlled by Canadian citizens.⁸ As detailed in the pending application and the Petition, BIBI would remain the licensee of WLKY(FM), but BIBI would become 100% owned by 123 Corp. The proposed ownership structure of BIBI following the transfer of control is as described below.

3. *Corporate Structure.* As detailed in the Petition, the parties seek Commission consent to transfer 100% ownership of BIBI, a Delaware corporation, from the three natural persons who currently control the company today to 123 Corp., a Delaware corporation of which the sole shareholder is a Canadian corporation named Border Broadcasting Corporation (BBC). In turn, BBC will be owned by Canadian citizens Andrew Dickson and Jon Pole (each directly holding 0% equity and 45.15% voting interests), as well as two family trusts (each directly holding 50% equity and 4.545% voting interests).⁹ The family trusts, named The Andrew and Karen Dickson (2022) Family Trust (the Dickson Trust), and The Jon and Sasha Pole (2022) Family Trust (the Pole Trust) (collectively the Trusts), are organized by each of the two principal individuals, respectively, and their spouses. The Trusts are each organized under the laws of Canada and their primary purpose is estate planning for the respective trustees.¹⁰ The co-trustees of the Dickson Trust are Andrew Dickson and Karen Dickson, both Canadian citizens. The co-trustees of the Pole Trust are Jon Pole and Sasha Pole, also both Canadian citizens. In both cases, each co-trustee has a 50% voting interest and negative control in their respective Trusts.¹¹

⁴ Under section 1.5001(i)(1) of the Commission's rules, petitions for a declaratory ruling are required to identify and seek specific approval for any foreign individual, entity, or group that holds or would hold, directly and/or indirectly, more than 5% of equity and/or voting interests, or a controlling interest, in the licensee's controlling U.S. parent, subject to certain exemptions, including an exemption that increases the specific approval threshold to 10% for certain institutional investors. 47 CFR § 1.5001(i)(1).

⁵ Petition at 6-7; First Supplement at 3.

⁶ The Petition was placed on public comment on May 4, 2023, with comments due June 5, 2023, and replies due June 20, 2023. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Border International Broadcasting Inc.*, Public Notice, MB Docket No. 23-153, DA 23-367 (May 4, 2023) (*Public Notice*).

⁷ See *infra* at para. 16.

⁸ See Application of Border International Broadcasting, Inc. for Consent to Transfer Control, Application File No. 0000206397 (filed Jan. 5, 2023).

⁹ The Petitioner indicates that Jon Pole, president, and Andrew Dickson, secretary-treasurer, are the sole directors and officers of BBC and that no other parties control BBC or have the power to appoint directors. Further, the Petitioner states that the company's by-laws provide that questions at board meetings must be decided by a majority of voting directors, and that no party is entitled to a second or casting vote when the board is deadlocked. First Supplement at 2-3.

¹⁰ Petition at 6.

¹¹ Second Supplement at 3.

4. Pursuant to section 1.5001(h) of the Commission's rules,¹² the Petitioner requests approval of up to an aggregate 100% indirect foreign ownership of the proposed controlling U.S. parent, 123 Corp.¹³ In addition, Petitioner requests specific approval for certain foreign individuals and entities that will hold, indirectly, more than 5% of the equity and/or voting interests of 123 Corp.¹⁴ Specifically, Petitioner makes the following requests for specific approval: Border Broadcasting Corporation (Canada) to hold up to 100% equity and 100% voting; Andrew Dickson (Canada) to hold 21.42% equity and 49.995% voting; Jon Pole (Canada) to hold 10.71% equity and 49.995% voting; Karen Dickson (Canada) to hold 7.14% equity and 4.545% voting; The Andrew and Karen Dickson (2022) Family Trust (Canada) to hold 50.0% equity and 4.545% voting; and The Jon and Sasha Pole (2022) Family Trust (Canada) to hold 50.0% equity and 4.545% voting.¹⁵

5. *Public Interest Showing.* Petitioner contends that grant of the Petition is in the public interest because it would, among other things, further the Commission's stated goals of encouraging foreign investment in U.S. broadcast stations and the continuation of operations by such stations.¹⁶ Petitioner also asserts that the two principals, Andrew Dickson and Jon Pole, have extensive experience operating broadcast radio stations in Canada with an emphasis on localism.¹⁷ Petitioner asserts that the combination of the parties' broadcasting expertise and the infusion of capital that would result from the proposed transaction will allow BIBI to continue operations of WLYK and facilitate its provision of local news programming and music to the listeners in the Cape Vincent, New York community.¹⁸

6. *National Security, Law Enforcement, Foreign Policy and Trade Policy Review.* Pursuant to Commission practice, we referred the Petition to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the proposed foreign ownership of BIBI's proposed controlling U.S. parent, 123 Corp.¹⁹ On May 8, 2023, the Committee notified the Commission that it was reviewing the Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Petition.²⁰ Subsequently, on July 28, 2023, the Committee notified the Commission that Petitioner had provided complete responses to the Committee's initial questions and that it was conducting its review to assess whether granting the Petition

¹² 47 CFR § 1.5001(h).

¹³ Petition at 1-7.

¹⁴ Petition at 6-7; First Supplement at 3; Second Supplement at 6-7.

¹⁵ *Id.* The indirect equity interest of Andrew Dickson reflects his interest as an individual beneficiary of the Dickson Trust combined with his interest as the sole shareholder of two entities that are also beneficiaries of the Dickson Trust. Similarly, the indirect equity interest of Jon Pole reflects his interest as an individual beneficiary of the Pole Trust combined with his interest as the sole shareholder of two entities that are also beneficiaries of the Pole Trust. Petition at 5, nn. 11-12. The indirect equity interest of Karen Dickson reflects her interest as an individual beneficiary of the Dickson Trust.

¹⁶ Petition at 8.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 2023 Public Notice at 3, n.26 (citing *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (2020 *Process Reform Order*) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913)).

²⁰ Letter from, Jake O. Seaboch, Attorney Advisor, National Security Division, Department of Justice (DOJ), to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-153 (filed May 8, 2023).

would pose a risk to the national security or law enforcement interests of the United States.²¹ On November 3, 2023, the NTIA submitted a letter to the Commission in which the Committee advised the Commission that it has no recommendation to the Commission at this time and no objection to the Commission granting the Petition.²²

7. *Standard of Review.* We review the Petition under section 310(b)(4) of the Act, which states that “[n]o broadcast . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”²³ This section of the Act grants the Commission discretion to allow foreign investment in a licensee’s controlling U.S.-organized parent above 25% unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.²⁴ In evaluating petitions relating to foreign ownership, the Commission affords appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.²⁵

8. In the *2016 Foreign Ownership Order*, the Commission modified the broadcast licensee foreign ownership review process by extending the streamlined rules and procedures developed for review of foreign ownership of common carrier and certain aeronautical licensees under section 310(b)(4) to the broadcast context, with certain limited exceptions.²⁶ The *2016 Foreign Ownership Order* expressly provides for processing of petitions requesting approval for up to and including 100% aggregate foreign voting and/or equity investment by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee.²⁷ To exercise in a meaningful way the discretion conferred by statute, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.²⁸

III. DISCUSSION

10. We find that the public interest would be served by permitting foreign ownership of 123 Corp., BIBI’s proposed controlling U.S. parent, in excess of the 25% benchmarks set forth in section 310(b)(4) of the Act and grant the Petition subject to the conditions described below. We also find that it is in the public interest to grant Petitioner’s request to permit foreign investors to indirectly own up to 100% of 123 Corp.’s voting and equity interests, in the aggregate. In addition, we grant the requests for specific approval under the Commission’s rules.

11. *Section 310(b)(4) Determination and Public Interest Analysis.* Pursuant to section 310(b)(4) of the Act, as well as sections 1.5001 through 1.5004 of the Commission’s rules, we find that

²¹ Letter from Jake O. Seaboch, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-153 (filed July 28, 2023).

²² Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-153 (filed Nov. 3, 2023).

²³ 47 U.S.C. § 310(b)(4).

²⁴ *See id.*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

²⁵ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

²⁶ *See generally id.*

²⁷ *Id.* at 11282, para. 15.

²⁸ *See, e.g., id.* at 11282, 11283-84, paras. 15, 20 (noting that the requirements adopted in the streamlined foreign ownership rules ensure that the Commission has the information necessary to evaluate and understand a licensee’s ownership structure and to fulfill its obligations under section 310(b) of the Act).

the public interest is served by permitting foreign ownership of 123 Corp. in excess of the 25% benchmarks in section 310(b)(4) of the Act and consequently, we grant the Petition, as conditioned below. We also find that it is in the public interest to grant Petitioner's request for approval of up to an aggregate 100% indirect foreign ownership of 123 Corp. We further find that it is in the public interest to grant specific approval for the percentages set out to individuals and entities specified in Section IV below.²⁹ Specifically, we conclude that grant of the Petition is in the public interest because it, among other things, provides the Licensee with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.³⁰

12. *National Security and Law Enforcement Review.* As stated, as part of its public interest analysis, the Commission coordinates petitions for section 310(b) foreign ownership rulings with the relevant Executive Branch agencies for national security, law enforcement, foreign policy, and trade policy issues.³¹ The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Petition and do not object to the Commission granting it, nor do they request the imposition of any conditions on the grant.³² We also note that no pleadings were filed opposing the Petition.

IV. DECLARATORY RULING

13. Under these circumstances, pursuant to section 310(b) of the Act and sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest would be served by permitting foreign ownership of BIBI's proposed controlling U.S. parent, 123 Corp., to exceed the 25% benchmarks in section 310(b)(4) of the Act, as amended. We also find that it is in the public interest to permit up to an aggregate 100% indirect foreign ownership of 123 Corp.

14. *Specific Approval.* We also find no grounds to deny the requests for specific approvals. Therefore, pursuant to section 1.5001(i) of the Commission's rules,³³ this Declaratory Ruling grants specific approval for the following individuals and entities to hold, indirectly, more than 5% of the equity and/or voting interests of 123 Corp.:

- Border Broadcasting Corporation (100% Equity and 100% Voting) (Canada);
- Andrew Dickson (21.42% Equity and 49.995% Voting) (Canada);
- Jon Pole (10.71% Equity and 49.995% Voting) (Canada);
- Karen Dickson (7.14% Equity and 4.545% Voting) (Canada);

²⁹ As noted in the Petition, the Petitioner does not seek advance approval pursuant to section 1.5001(k) of the Commission's rules for any foreign individual or entity subject to specific approval to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the broadcast licensee in the future. *See* Petition at note 13; 47 CFR § 1.5001(k).

³⁰ *See* Petition at 8 (describing public interest benefits arising from approval of this declaratory ruling and the related transaction).

³¹ *See 2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, para. 15. *See also 2020 Process Reform Order* at 10934-36, paras. 17, 24 (2020).

³² *See* Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-153 (filed Nov. 3, 2023).

³³ 47 CFR § 1.5001(i).

- The Andrew and Karen Dickson (2022) Family Trust³⁴ (50.0% Equity and 4.545% Voting) (Canada);
- The Jon and Sasha Pole (2022) Family Trust³⁵ (50.0% Equity and 4.545% Voting) (Canada).³⁶

16. *Additional Terms and Conditions.* Under this Declaratory Ruling, the Petitioner has an affirmative duty to monitor its foreign equity and voting interests, calculate those interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,³⁷ and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.³⁸ This Declaratory Ruling is subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before foreign ownership of Petitioner exceeds the terms and conditions of this Declaratory Ruling.³⁹ This includes the requirement that Petitioner obtain Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or indirectly, more than 5% (or more than 10% for certain investors) of the equity and/or voting interests, or for any foreign individual, entity, or group to hold a controlling interest, in the company.⁴⁰ If, at any time, Petitioner knows, or has reason to know, that it is no longer in compliance with this Declaratory Ruling, section 310(b) of the Act, or the Commission's foreign ownership rules, Petitioner shall file a statement with the Commission explaining the circumstances within 30 days of the date that it knew, or had reason to know, that it was no longer in compliance.⁴¹ Petitioner may be subject to enforcement action by the

³⁴ Andrew Dickson and Karen Dickson are co-trustees of the Dickson Trust, with each co-trustee holding a 50.0% voting interest, and thus negative control, in the trust. Petition at 4-7; Second Supplement at 3, Exhibit F (Amended).

³⁵ Jon Pole and Sasha Pole are the co-trustees of the Pole Trust, with each co-trustee holding a 50.0% voting interest, and thus negative control, in the trust. Petition at 4-7; Second Supplement at 3, Exhibit F (Amended).

³⁶ As discussed above at note 27, the Petitioner has not sought advance approval pursuant to section 1.5001(k) of the Commission's rules for any foreign individual or entity subject to specific approval to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the broadcast licensee in the future. Accordingly, prior Commission approval would be necessary for any of these specific interest holders to increase their equity or voting interests above the percentages approved herein.

³⁷ 47 CFR §§ 1.5002-1.5003.

³⁸ 47 CFR § 1.5004, note to paragraph (a).

³⁹ See generally 47 CFR § 1.5004. Section 1.5004, *inter alia*, specifies that licensees have an ongoing, proactive obligation to monitor their foreign ownership compliance and to take preemptive action to remain in compliance with the Commission's foreign ownership rules and any declaratory ruling they have received. 47 CFR § 1.5004(a). This rule section sets out the requirements for when a licensee must seek prior Commission approval for any new, not previously approved, foreign individuals, entities, or groups acquiring an interest in excess of the specific approval threshold. 47 CFR § 1.5004(a). It sets out a licensee's obligations regarding subsidiaries and affiliates and the insertion of new controlling or non-controlling foreign-organized companies. 47 CFR § 1.5004(b)-(d). It also specifies when a new petition for declaratory ruling must be filed and the obligations for continuing compliance, including how to report inadvertent non-compliance, and how to file a remedial petition for declaratory ruling, as well as the consequences of trying to evade the foreign ownership rules. 47 CFR § 1.5004(e)-(f).

⁴⁰ 47 CFR § 1.5004(a)(1).

⁴¹ See 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in BIBI above the specific approval threshold without Commission approval, BIBI, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of BIBI to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

Commission for such non-compliance, including an order requiring divestiture of the foreign investment.⁴²

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), and sections 1.5001 through 1.5004 of the Commission's rules, 47 CFR §§ 1.5001-04, and pursuant to authority delegated to the Media Bureau in sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, the Petition for Declaratory Ruling filed by Border International Broadcasting, Inc. **IS GRANTED** subject to the conditions specified herein.

18. **IT IS FURTHER ORDERED** that this Declaratory Ruling **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴² *Id.*